

# IOWA DEPARTMENT OF NATURAL RESOURCES

## ADMINISTRATIVE CONSENT ORDER

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**IN THE MATTER OF:****GALEN WAGNER**

Facility #68186

MITCHELL COUNTY, IOWA

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**ADMINISTRATIVE CONSENT  
ORDER****NO. 2014-AFO- 25****NO. 2014-SW- 17****TO: Galen Wagner**  
3480 Noble Ave.  
Osage, IA. 50461

### I. SUMMARY

This Administrative Consent Order (Order) is entered into between Galen Wagner and the Iowa Department of Natural Resources (Department) for the purpose of resolving violations of Iowa's requirements pertaining to animal feeding operations and solid waste disposal. In the interest of avoiding litigation, the parties have agreed to the provisions set forth below.

Any questions or response regarding this Order should be directed to:

**Relating to technical requirements:**Jeremy Klatt  
IDNR Field Office #2  
2300 15<sup>th</sup> Street SW  
Mason City, IA 50401  
Ph: (641) 424-4073  
Fax: (641) 424-9342  
Email: [Jeremy.Klatt@dnr.iowa.gov](mailto:Jeremy.Klatt@dnr.iowa.gov)**Relating to legal requirements:**Randy Clark, Attorney II  
Iowa Department of Natural Resources  
502 East 9<sup>th</sup> Street  
Des Moines, Iowa 50319-0034  
Ph: (515) 725-8252**Payment of penalty to:**Iowa Department of Natural Resources  
Henry A. Wallace Building  
Des Moines, Iowa 50319-0034  
Attn: Randy Clark

### II. JURISDICTION

This Order is issued pursuant to Iowa Code §455B.175(1) and §455B.307(2) which authorize the Director to issue any Order necessary to secure compliance with or prevent a violation of Iowa Code Chapter 455B, Division III, Part 1 (Water Quality), Division IV, Part 1 (Solid Waste) or Iowa Code Chapter 459A and the rules adopted or permits issued pursuant thereto, and Iowa Code §455B.109 and

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567 Iowa Administrative Code (IAC) Chapter 10, which authorize the Director to assess administrative penalties.

### III. STATEMENT OF FACTS

1. Galen Wagner owns and operates a cattle open feedlot operation at 3480 Noble Avenue, Osage, Iowa, located in the NW¼ of Section 32, T98N, R16W (Osage Township), Mitchell County, Iowa. The operation consists of a 580 head capacity open feedlot. Manure runoff control measures consist of an earthen berm to capture manure and settle solids for a portion of the feedlot; for another portion of the feedlot concrete chutes convey manure runoff to a small below-ground concrete pit that is emptied into a slurry store. According to Mr. Wagner, the concrete chutes and below-ground concrete pit were installed in 1976, when such measures were considered progressive design for a medium size open feedlot operation.

2. Following a complaint investigation on June 5, 2007, Department Field Office #2 (FO2) advised Mr. Wagner by letter dated June 8, 2007, that disposal of dead animals by open burning violated Iowa law and provided him with information as to lawful methods of disposal. Mr. Wagner was also encouraged to repair an erosion gully that extended from his open feedlots to nearby Spring Creek in order to prevent water quality violations. Mr. Wagner explained that a clean water diversion culvert under a concrete manure channel became plugged, causing clean water to overflow the channel and erode a gully along the slurry store. Mr. Wagner later explained that he cleaned out the culvert and filled the erosion gully. By letter dated October 18, 2007, Mr. Wagner was advised that a follow-up inspection conducted by FO2 staff on October 17, 2007, revealed some improvement to the erosion gully had been made but further improvements were needed, and a deteriorated vegetative filter strip appeared inadequate to prevent manure solids from entering Spring Creek. Mr. Wagner was provided a copy of Department subrule 567 IAC 65.101(1) which requires open feedlots to remove settleable solids from open feedlot effluent prior to discharge to water of the state.

3. By letter dated July 20, 2010, FO2 informed Mr. Wagner regarding a complaint investigation on July 15, 2010. FO2 staff observed manure runoff from the Wagner operation pooling in a neighbor's pasture and then flowing into Spring Creek. Manure solids were observed along the west bank of the stream and a strong manure odor was detected. Mr. Wagner explained that the manure runoff came from a south open lot that was added after manure control measures for the other open lots were established. While he had constructed a concrete wall along a fence line with a picket fence to settle out manure solids, this system would plug easily resulting in a discharge of manure slurry during large precipitation events. Mr. Wagner was informed these conditions violated Iowa law; he was directed to submit a written plan of corrective actions within 15 days and to construct adequate solid settling facilities. A follow-up inspection by FO2 staff on October 15, 2010 revealed Mr. Wagner had cleaned up the manure in the neighbor's pasture and was utilizing the services of ISU Extension to periodically inspect his operation. Mr. Wagner also constructed an open front barn to cover approximately half of the south lot to reduce the amount of water entering the settling basin, plugged the outlet of the settling basin and handled all effluent from the uncovered portion of the south lot with bedding pack dry manure under the barn.

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4. On April 30, 2014, FO2 staff conducted a complaint investigation and observed manure runoff from the Wagner operation flowing into Spring Creek at a rate of 15-20 gallons per minute. The discharge was brown in color, emitted a strong manure odor and was causing discoloration of Spring Creek at the discharge point. Analysis of samples from Spring Creek document significantly elevated levels of BOD, Ammonia as N, and E.coli bacteria downstream of the discharge point compared to upstream levels. The discharge originated from the open feedlot pens south and west of the slurry store; the concrete chutes directed feedlot runoff to the below-ground pit; the pit either overflowed or the runoff bypassed the pits and entered an erosion gully that originated near the slurry store and terminated at Spring Creek. Mr. Wagner explained that the clean water diversion culvert under the concrete chutes became plugged with ice causing an overflow of the runoff control system.

A flow path from the earthen berm/solid settling area east of the south open feedlot pens into an adjacent grass field and then into Spring Creek was also observed. Manure solids on the bank of Spring Creek indicated previous manure discharges to Spring Creek via this flow path. Mr. Wagner explained that a large runoff event from the spring thaw caused the discharge.

Three dead cattle were observed at two locations. Both locations had a dog on a short chain near the dead cattle. When asked about this Mr. Wagner replied Department staff had advised he could feed dead cattle to his dogs.

A feed storage area for the Wagner operation is located across the road. FO2 staff observed runoff from this area discharging into Spring Creek via the road ditch. Analysis of samples from this discharge as it entered Spring Creek document significantly elevated levels of Ammonia as N and BOD.

5. FO2 staff revisited the Wagner operation on June 6, 2014. Manure control measures were unchanged from the April 30, 2014 investigation but during this inspection manure was not being discharged to Spring Creek. Mr. Wagner stated approximately 400 head of cattle were in the feedlot.

6. FO2 informed Mr. Wagner by letter dated June 10, 2014, that the discharge of pollutants and mortality disposal observed on April 30, 2014, violated Iowa law. Mr. Wagner was also informed that information gathered during the June 6, 2014, inspection revealed his operation was a medium CAFO, requiring an NPDES permit. Mr. Wagner was directed to immediately take measures to prevent further discharges and to apply for an NPDES permit by September 15, 2014.

7. Mr. Wagner's engineer inspected the Wagner operation on July 8, 2014 and subsequently reported to FO2 that he would be providing an engineering design for manure control improvements. The engineering design provided to Mr. Wagner on July 31, 2014, called for reducing the number of head in the operation to less than 300 head and eliminating discharges. Designed improvements included an earthen berm along the east and south property lines to provide runoff storage. Most of the clean water that was draining via the diversion culvert under the concrete chutes would be diverted south away from the culvert. The concrete walls on the chutes and on the concrete pit would be raised. The wall along the slurry store would be raised causing overflow from the concrete chutes to be diverted to the south where it would be contained within the proposed earthen berm. Mr. Wagner's engineer wrote that, "All runoff drain from the existing diversion culvert and any overflows from the existing concrete chutes will be contained. With the majority of the clean water now diverted to the south, the existing concrete chute shouldn't be overloaded even if the existing culvert became plugged

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again. The design also included an earthen berm along the R.O.W. adjacent to the existing feed area to divert any runoff from the feed area into an existing terrace where it will be contained.”

8. On September 24, 2014, FO2 staff again inspected the Wagner operation. Mr. Wagner had installed concrete forms to prevent manure from entering the erosion gully and no discharge was observed. Mr. Wagner stated he had less than 200 head in his feedlot that day and planned to confine less than 300 head in the future. He also stated an engineer had prepared plans for runoff control measures that would be installed yet that fall.

9. On October 9, 2014, Mr. Wagner’s engineer inspected the Wagner operation, observing that the raised walls on the concrete chutes were half completed and the clean water diversion to the south was completed. Mr. Wagner subsequently reported that all dirt work had been completed with only final grading and seeding left to be completed in the spring of 2015.

#### **IV. CONCLUSIONS OF LAW**

1. Iowa Code §455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Since no such permit was in effect for this facility at the time of the discharge, the foregoing facts establish that this provision has been violated.

2. Iowa Code §§455B.304 and 459A.104 require the Environmental Protection Commission (Commission) to adopt rules related to the handling and disposal of solid waste and to the construction or operation of open feedlot operations, including minimum manure control requirements. The Commission has done so at 567 IAC Chapters 100-123 and Chapter 65.

3. Iowa Code §459A.401(1) and 567 IAC 65.101(1) require each open feedlot operation to remove all settleable solids from open feedlot effluent prior to discharge into a water of the state. The foregoing facts establish that these provisions were violated.

4. 567 IAC 65.101(9) requires any person storing, handling, transporting, or land applying manure from an animal feeding operation who becomes aware of a release to notify the Department of the release as soon as possible, but not later than six hours after the onset or discovery of the release. The foregoing facts indicate that this provision has been violated.

5. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor, or other aesthetically objectionable conditions; discharges that settle to form sludge deposits; discharges that interfere with livestock watering; or discharges that are toxic to animal or plant life. The foregoing facts establish that one or more of these criteria have been violated.

6. 567 IAC 100.4(2) establishes the requirements for the disposal of dead farm animals. Pursuant to 567 IAC 100.4(2)“b,” the farm animals must result from an operation on the premises of disposal and must be buried as required in 567 IAC 100.4(2)“b” and “c.” The foregoing facts establish violation of this requirement.

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**V. ORDER**

THEREFORE, the Department hereby orders and Galen Wagner consents to do the following:

1. By July 1, 2015, submit to FO2 a statement prepared by a professional engineer licensed in the State of Iowa certifying that modifications to the Wagner operation as proposed in the engineer's design summarized in Statement of Facts paragraph 7, have been completed.
2. At all times, confine less than 300 cattle and less animals than any other "medium CAFO" category as defined in 567 IAC 65.100. This prohibition does not apply if Mr. Wagner applies for and obtains an NPDES permit prior to confining the additional animals.
3. Maintain first of the month inventory records of animals at the operation and submit the records to Department FO2 on a quarterly basis (January-March, April-June, July-September, October-December) by the 10<sup>th</sup> day of the month following each calendar quarter.
4. Remove all settleable solids from open feedlot effluent prior to discharge into a water of the state as required in Iowa Code §459A.401(1) and ensure that any discharge to water of the state does not violate water quality standards as provided in 567 IAC 61.3(2).
5. Comply with all requirements for the disposal of dead farm animals.
6. Pay an administrative penalty of \$6,500.00. The penalty shall be paid to the Department within 30 days of the date the Director signs this Order.

**VI. PENALTY**

1. Iowa Code §455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day for each violation of water pollution control laws; more severe criminal sanctions are also provided. Iowa Code § 455B.307 authorizes the assessment of civil penalties of up to \$5,000 per day for each violation of solid waste laws.
2. Pursuant to the provisions of Iowa Code §455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties, a penalty of \$6,500.00 is assessed. The penalty shall be paid within 30 days of the date the Director signs this Order. The administrative penalty is determined as follows:
  - a. Economic Benefit. Time and money were saved by Mr. Wagner in avoiding required manure control by not properly removing manure solids, bypassing or allowing the below-ground pit to overflow, and failing to eliminate the erosion gully. It is estimated that these savings are at least \$500.00.
  - b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the Department has decided to handle the violations administratively at this time as the most equitable and efficient means of resolving the matter. Actual harm to the environment was documented by water

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quality analysis, and by visual observation of impact to Spring Creek. Further, this is a repeated violation. Multiple rule and statutory provisions were violated: failure to retain manure solids; discharge to waters of the state/United States; failure to report a release; violation of water quality standards; and unlawful disposal of dead farm animals. For these reasons, \$4,500.00 is assessed for this factor.


c. Culpability. While Mr. Wagner took some measures to prevent manure control violations he is still responsible to foresee and prevent all such violations. Due to previous, similar violations caused by the plugged diversion culvert he should have taken measures to avoid future violations. Further he expanded the operation without the necessary runoff controls. For these reasons, \$1,500 is assessed for this factor.

## VII. WAIVER OF APPEAL RIGHTS


This Order is entered into knowingly and with the consent of Galen Wagner. For that reason Galen Wagner waives the right to appeal this Order or any part thereof.

## VIII. NONCOMPLIANCE

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of additional administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code §§ 455B.191 and 455B.307.

  
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CHUCK GIPP, DIRECTOR  
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 23<sup>rd</sup> day of  
December, 2014.

  
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GALEN WAGNER

Dated this 17 day of  
Dec., 2014.

#68186; Field Office 2; Randy Clark; Ken Hessenius; Gene Tinker; EPA; VI.C, VIII. D.1.b, D.2.d, D.3.a